

**Letter of Findings: 65-20220057  
Indiana Overweight Proposed Assessment  
for the Year 2022**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of the assessed oversize/overweight penalty was unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the oversize/overweight penalty.

### ISSUE

#### **I. Motor Vehicles - Oversize/Overweight Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

### STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing its customers contract hauling services. Publicly available information indicates that Taxpayer has between 15 to 24 employees and operates 24 trucks. Taxpayer operates its vehicles on both Indiana and out-of-state highways.

Taxpayer operated one of its vehicles in Indiana. The truck was being used to transport milk from an Indiana dairy location and was stopped by the Indiana State Police while traveling on U.S. Highway I-27. The vehicle and its load were found to be overweight. The officer determined that the truck was overweight "on both axle[] groups and [overweight] on gross weight." The officer found that the vehicle's total weight was 80,450 pounds which was 450 pounds over the allowable weight of 80,000 pounds. In addition, the officer found that the drive axle weight was 600 pounds overweight, and that the rear tandem axle was 350 pounds overweight. Taxpayer did not possess the specific permit to transport an oversized or overweight load on an Indiana highway.

The Indiana Department of Revenue ("Department") issued a \$5,000 "civil penalty" which the Department, in its notice of proposed assessment sent to Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law . . . ."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for its protest.

Taxpayer objects to the \$5,000 penalty on the following grounds:

- The penalty "is based on an overweight violation that uses an inaccurate means to determine the weight of . . . a tandem axle."
- "Milk which is a liquid product in a single compartment vessel which [Taxpayer's] trailer is, cannot be accurately measured by the use of a portable scale" because the "liquid flows changing the product's weight distribution creating a false weight due to a change of height of the portable scale."
- Taxpayer also challenges the officer's use of a portable scale because "the air brake being set up during the weighing process creates an automatic dumping of air in the air suspension bellows . . . once again changing the weight distributions."

As a consequence of the above-mentioned variables, Taxpayer concludes "[t]he mathematical calculations that [were] used to determine the gross weight have no accurate variance for these questions."

In addition, Taxpayer points out that vehicle was delivered to the dairy "on the same day with a gross [weight] of 79,580 lbs." Taxpayer supports its assertion by presenting a copy of the dairy's "bill of lading and the scale copy . . . ."

Taxpayer "respectfully request[s] the assessment be dropped." This Letter of Findings is based on Taxpayer's written protest, the documentation within the Department's file, the documentation presented by Taxpayer, and consideration of Taxpayer's explanation presented during the phone hearing.

## **I. Motor Vehicles - Oversize/Overweight Penalty.**

### **DISCUSSION**

Taxpayer argues that, as noted above, the \$5,000 penalty was excessive and should be abated. The issue here is whether Taxpayer has met its burden of establishing that the officer's weight calculations were incorrect and that its vehicle, in this instance, was under the maximum weight requirements.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . . ." According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$5,000 penalty at issue is *over and above any other penalty paid to the local jurisdiction*.

Taxpayer has presented a compelling argument that the vehicle was under the maximum weight and that the dairy's bill of lading and scale documents warrants appropriate consideration. However, the Department is unable to entirely disregard the officer's determination and conclude that Taxpayer has met its statutory burden under of IC § 6-8.1-5-1 establishing that the penalty was *wrong*.

The Department respectfully declines to abate the penalty. Nonetheless, in addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides the Department "not more than" language when generating a

proposed assessment amount. This provision allows consideration and weighing of verified and relevant mitigating circumstances. Taxpayer has provided such verification and the circumstances here are relevant. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part.

July 27, 2022

*Posted: 05/03/2023 by Legislative Services Agency*

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